7-1300-11691-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EDUCATION

Cheri Yecke, Commissioner,
Department of Education,
State of Minnesota

Complainant,

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATIONS

v.

Midwest Farmworker Employment

and Training, Inc.,

Respondent.

The above matter was heard by Administrative Law Judge Jon L. Lunde on nine different days between June 18 and July 2, 1998. The hearings were conducted in St. Paul and St. Cloud, allowing for the convenience of the witnesses.

Assistant Attorney General Nancy J. Leppink represented the Department of Education, then known as the Department of Children, Families and Learning (DCFL) throughout the Hearing, Briefing and some of the Post-Hearing Motion phases of this matter. Subsequent to Ms. Leppink's resignation from the Office of Attorney General, the Department has been represented by Beverly A. Bryant, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130. Midwest Farmworker Employment and Training, Inc. (MFET, Respondent) is represented by Larry Meuwissen, Esq., 8 Bates Avenue, St. Paul, MN 55106.

When Judge Lunde became disabled in the summer of 2000, this matter was transferred to Administrative Law Judge Richard C. Luis.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Education will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of Cheri P. Yecke, Commissioner of Education, 1500 West Highway

36, Roseville, MN 55113 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Whether it was proper for the Department to terminate MFET's grant for the administration of the Federal Community Services Block Grant (CSBG) and the Minnesota Economic Opportunity Grant (MEOG) programs for the grant period of July 1, 1997 through December 31, 1999. In that connection, has the Department proven that MFET's application was incomplete and out of compliance? Has the Department proven MFET was in willful violation of the terms of its CSBG/MEOG Grant for the 1996-1997 Grant period?

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Background

1. The Office of Economic Opportunity (OEO) of the Minnesota Department of Education (Complainant) is responsible for the administration of the Federal Community Services Block Grant (CSBG) and the Minnesota Economic Opportunity Grant (MEOG) programs.

2. Midwest Farmworker Employment and Training, Inc. (MFET) is a private, nonprofit agency whose clients are primarily migrant and seasonal farmworkers, and, at the time of the grant application in issue, was listed specifically as a grantee of CSGB/MEOG program funds. Since 1981, MFET had received CSGB/MEOG funding.

3. On June 30, 1997, MFET submitted an application for the 1998-1999 economic opportunity grants. Exhibit Ex. D-8.

4. MFET's economic opportunity grant application for 1998-1999 was reviewed at the Department's Office of Economic Opportunity by Fred Aden, the Office's Economic Opportunity Supervisor. Mr. Aden compared MFET's filing with applicable federal and state laws and regulations, the 1998-1999 Application Guidelines issued by the Department, the Grant Application Review Summary and the 1998-1999 Corporate Document File Checklist. Exs. D-9, D-10. While Mr. Aden conducted his review, an

independent review was done at the State Office by Ted Niskinen, an OEO field representative responsible for monitoring MFET's performance.

5. After Mr. Aden and Mr. Niskinen completed their independent reviews, they reviewed MFET's application, together, section by section, to determine whether their independent findings were in agreement. After that joint review, Aden and Niskinen determined that they agreed that MFET's application was incomplete and out of compliance. T. 246.

6. Aden and Niskinen then met with Connie Greer, their supervisor and Director of the Office of Economic Opportunity. Greer concurred with the determinations of Aden and Niskinen, and directed Mr. Aden to notify MFET in writing of deficiencies in its application that could lead to a denial of the grant for 1998-1999.

7. On September 10, 1997, Mr. Aden issued a letter to MFET describing the deficiencies in its application, explaining that the deficiencies could lead to a denial of the grant, and requesting that MFET revise its application and submit supplementary information to cure the deficiencies. Ex. D-11.

8. MFET submitted a revised application and supplementary information (Ex. D-12) on October 8, 1997. The revised application and supplementary information were reviewed by Aden and Niskinen, who concluded after their review that MFET's application was still incomplete and non-complying. They met again with Greer, advised her of their determination, and also advised Greer that they had determined additionally that MFET had violated of the terms of its 1996-1997 CSBG/MEOG grant agreement.

9. Aden and Niskinen initially became concerned about certain aspects of MFET's performance under its CSBG/MEOG grant in 1993, when the OEO began to receive complaints from clients, employees and other service providers concerning MFET's failure to provide direct services, failure to pursue collaborative working relationships with other service providers, advocacy agencies and coordinating groups, and possible violation of applicable federal and state employment laws. Such complaints had continued through the 1996-1997 CSBG/MEOG grant period.

10. Additional monitoring activities had revealed problems relating to MFET's client complaint procedures, the lack of involvement of low income persons in the planning, implementation and evaluation of its programs, and with MFET's compliance with provisions of the Americans with Disabilities Act. Based upon the complaints and monitoring activity undertaken by OEO, Aden and Niskinen, along with Ms. Greer, determined that MFET had willfully violated its 1996-1997 Economic Opportunity Grant Agreement.

11. Regarding their determination that MFET's October 8, 1997 submission failed to cure the earlier deficiencies and that MFET's application continued to be incomplete and noncompliant, OEO officials Aden and Niskinen were concerned specifically that MFET's application continued to fail to address the specific relationship between the agency's new mission statement, its current resources and its capability to carry out its work plan. The breadth of the MFET mission required modification because its resources had become greatly diminished earlier in 1997 when MFET failed

to retain recognition and funding as the Minnesota Grantee of Federal Jobs and Training Partnership Act (JTPA) funding. To that point, JTPA funds had financed approximately 75% of MFET's operations.

12. For the 1996-1997 JTPA Grant Period, MFET had been awarded the Minnesota JTPA Grant, instead of OEO, which had also applied. During that competition, OEO had been a unit of the Minnesota Department of Economic Security. During the fall of 1997, OEO was transferred to DCFL.

13. OEO determined that MFET's revised application still failed to provide a complete description of its service sites and how it would deliver services at those sites. OEO officials also were concerned that MFET failed to address in its work plan four of the needs that it identified as priorities (provision of childcare, legal services, agricultural employment and health services).

14. Another problem in MFET's grant application involved funding allocations, which were projected to increase from $670,000 under the 1996-1997 grant agreement to $828,602 under the 1998-1999 grant agreement. In its revised application, MFET reduced by $211,783 its budget for services that addressed direct needs of migrant and seasonal farmworkers (food vouchers, food pantries, transportation and emergency housing), which are items that MFET had identified as top priorities.

15. MFET's Work Plan failed to provide any specific discussion of strategies for its Self-Sufficiency Program and its Advocacy Program, which the Department believed was required under applicable Minnesota Rules (Minn. Rule 3350.0170, subp. 1), the Client Results section of the Narrative portion of the application and the Application Guidelines. Exs. D-7, D-8 and D-12.

16. On November 20, 1997, the Department notified MFET that it was terminating its future CSBG/MEOG funding pursuant to Minn. Rule 3350.0060. The OEO gave two general grounds for termination: (1) Willful violation of the 1996-1997 Economic Opportunity Grant Agreement; and (2) An incomplete/non-complying application for the 1998-1999 Economic Opportunity Grant. MFET filed a timely appeal, and the hearing process was undertaken.

17. After the contested case hearing and subsequent briefing, on November 25, 1998, MFET filed a Motion for Remand and Other Relief, in which it argued that a Remand was appropriate because MFET was entitled to a hearing before the agency made its decision not to continue its CSBG/MEOG grants for the 1998-1999 grant period, and subsequently cut off its funding. In reply, the Department argued that MFET had no legal right to a hearing prior to the determination (on November 20, 1997) to deny the CSBG/MEOG grant for 1998-1999.

18. ALJ Lunde issued a Recommended Order on Motion to Remand and for Other Relief on March 4, 1999, which Order recommended that the November 20, 1997 Notice of Termination be vacated and funding restored, pending a final decision on the merits. Judge Lunde certified his Order to the Commissioner on March 4, 1999.

19. On August 9, 1999, Tammy L. Pust, the Commissioner's Designee, issued an Order Denying the Respondent's Motion for Remand and for Other Relief and

remanded the matter to the Administrative Law Judge for a recommendation on the merits.

20. The August 9, 1999 Order noted that, to the Commissioner's knowledge, Exhibit A-38, the Community Services Block Grant Plan for 1996-1997, had not been admitted to the record. Counsel for both sides subsequently stipulated to the document's admission, and the Administrative Law Judge has admitted Exhibit A-38.

21. On November 13, 1997, Complainant approved a grant application made by MFET for an Emergency Shelter Grants Program (ESGP) Grant. Ex. A-23. Approval of the ESGP Grant involves many of the same standards as the CSBG/MEOG grant approval process. The amount of the ESGP grant was $38,000.00.

Application Issues

22. MFET's revised application and supplemental information (filed October 8, 1997) did not describe specifically how MFET had conferred with area service providers and had established working relationships with them, nor how MFET would coordinate its funding with other public and private resources and how such action would result in a multi-program impact on clients' progress toward self-sufficiency.

23. MFET's revised application and supplemental information did not describe MFET's roles with any of the family services collaboratives in its local office service areas.

24. MFET's revised application demonstrates an adversarial stance towards the agency that was awarded the JTPA funding instead of MFET. Ex. D-12 (p. 2). At the same time, MFET admits the rival organization (a Texas entity called Motivation, Education and Training (MET)) provides employment and training services to migrant and seasonal farmworkers, which is one of MFET's program goals. The revised application indicates MFET made no effort to develop a working relationship with that agency or to develop linkages with it to fill gaps in services.

25. The letters of support included in MFET's revised application and supplemental information include general statements about "working together" and "being a partner" with MFET, but do not provide specific information and appear to be pro forma letters MFET obtained from other service providers to support the application for Federal JTPA funding because they refer generally to services MFET provided with such funding. In some instances, MFET also provided boilerplate language for the organizations to use in drafting their letters. T. 888-889.

26. MFET asserted in its revised application on October 8, 1997 that it had made referrals to local mental health providers in the areas of various Children's Mental Health Collaboratives, but failed to describe any role in such collaboratives, and its revised application remained incomplete and non-complying because in response to the requirement that it describe how it will collaborate with child care and other early child education programs to ensure smooth transitions to work for parents, it described only making referrals to such programs.

27. For the purposes of application and review, the Department's OEO assumed that "collaboration" means a "mutually beneficial and well-defined relationship entered into by two or more organizations to achieve common goals, including a

commitment to mutual relationships and goals, a jointly developed structure and shared responsibility, mutual authority and accountability for success, and sharing of resources and rewards." Ex. D-49.

28. MFET's application did not demonstrate specific involvement of low-income people in proposing, approving and evaluating the activities of the Community Action Program.

29. MFET's revised application did not address the requirement that it describe how major planning activities will be publicized to encourage community participation and how low-income people would be involved in the planning process. The revised application and supplemental information also failed to describe the advisory groups which were included in its evaluation processes as entities from which MFET would seek assessment and feedback about its programs.

30. Except for MFET's Self-Sufficiency Program, MFET did not provide a measurable client result for each goal, as well as the number of results expected, in the portion of the application regarding Planned Results. For MFET's first four goals and nine strategies, only three results are described. For the last two goals and four strategies, no results were described. For its Community Service Program, MFET states only how many times it will provide a particular service.

31. The revised application and supplementary information contained a statement that the Executive Committee of the Board of MFET approved the re-application on October 2, 1997, but minutes of the Executive Committee meeting were not submitted with the re-application dated October 8, 1997.

Contract Issues

32. The denial letter to MFET from the Office of Economic Opportunity issued November 20, 1997 detailed monitoring activities that had revealed problems relating to MFET's client complaint procedures, its involvement of low-income persons in the planning, implementation and evaluation of its programs and its compliance with the provisions of the Americans with Disabilities Act. Based on those complaints and their additional monitoring activities, the OEO determined MFET had willfully violated its 1996-1997 economic opportunity grant agreement.

33. During the period of its 1996-1997 grant, MFET frequently failed to establish and maintain cooperative working relationships with community providers of direct service to migrant and seasonal farmworkers. For example, it directed its staff not to provide information about MFET to other organizations and to have no contact with other service agencies other than to make referrals unless they first obtained the permission of MFET's central office. There were instances also when MFET declined or failed to respond to invitations by other service agencies to co-locate services in various areas of Minnesota. Ex. D-52, T. 1069-1071, T. 1327.

34. MFET failed to establish and maintain cooperative working relationships with coordinating and advocacy groups during the Grant Period 1996-1997. It sent a representative to only one of six meetings of the Minnesota Migrant Services Consortium during the 1996-1997 Grant Period, and failed to attend any of the eleven

Minnesota Farm Labor Coordinating Committee meetings from 1995 through November 20, 1997.

35. MFET was criticized in a 1996 report, "Bitter Sugar: Migrant Farm Worker Nutrition and Access to Services in Minnesota", published by the Food Shelf Association, the State Spanish Speaking Affairs Council and the Urban Coalition. Ex. D-54. At page 27 of the "Bitter Sugar" report, it is noted that MFET has been criticized in several communities for being reluctant to share information about its program, and consequently a number of providers indicated that they do not know whether to refer clients to MFET or not or that they are hesitant to promote collaborative efforts with MFET. MFET's methodologies are characterized as inhibiting coordination efforts and appearing to be obstacles in the providing of needed services to migrants in Minnesota.

36. In its relations with the Migrant Legal Services (MLS) organization, MFET simply referred clients to the legal services organization and failed to meet with MLS to talk about legal problems unique to migrant farmworkers or to work on strategies to coordinate efforts to deal with those problems. T. 982.

37. MFET failed to provide direct services to clients by imposing extra eligibility criteria that were inconsistent with federal law. This problem occurred on many, repeated occasions. Exs. D-34 and D-35.

38. To be eligible to receive services provided through CSBG/MEOG programs in Minnesota, potential recipients need only be at 100% (or in some cases, 125%) of the poverty level or below. In addition to applying this income requirement, MFET required clients to be enrolled in one of its employment training programs or to be employed to received assistance. Ex. D-18A, D-19i.

39. On some occasions, MFET denied direct services to eligible claimants, claiming a lack of funds, although funds were available. Exs. D-16, D-18A, D-19a, D-19b, D-19c. At no time during the 1996-1997 Grant Period did MFET spend all the money that was then available to it under the grant agreement. T. 998-1003.

40. During the 1996-1997 Grant Period, MFET required potential clients first to seek and then be denied assistance by other services agencies before MFET would decide whether to provide direct services such as food, housing or transportation assistance. A typical scenario would be that after completion of an extensive, time-consuming intake process, an individual or family would be asked (in accordance with MFET's policy) whether they had sought the assistance from any other service providers. If the answer was no, MFET directed them first to seek assistance from various other service providers including county social service agencies, food shelves and other community action agencies.

41. If individuals or families came back to MFET reporting that they had been unable to obtain services elsewhere, MFET then required them to provide a written denial from the service providers from which they had sought assistance. If they had not obtained a written denial, they were required to go back and request one. Exs. D-19d, D-19f, D-19k, D-19l, D-19m, D-19n, D-19u.

42. MFET failed to implement effective applicant/client complaint procedures. A grantee such as MFET is required to submit to the OEO a client service

appeals policy. In June 1996, the OEO advised MFET in writing that its complaint policies and procedures and complaint form must be rewritten for clients receiving Economic Opportunity Grant services in order to correct a variety of problems that had been reported. Ex. D-37. MFET's existing procedures involved a multi-level process which migrant workers, in the judgment of the OEO, were unlikely to be able to complete due to the itinerant nature of their work. Also, the procedures required the client appeals be sent to the Department of Labor in Washington, D.C. or Chicago, despite the fact that CSBG/MEOG funding is through the United States Department of Health and Human Services and the State of Minnesota.

43. Under complaint procedures implemented by MFET, it was unclear whether persons who could not write had the opportunity to file an oral complaint. The procedures were not written in plain language (a violation of Minnesota Statutes), nor did they comply with the Americans with Disabilities Act requirement that the procedures include a notice that they were available in alternative formats.

44. In a July 8, 1996 filing, MFET submitted revised client complaint procedures, but proposed that implementing the changes be delayed until the end of the migrant season, approximately in September.

45. The OEO denied MFET's request, noting that the ability of a client to file an oral complaint had not been addressed by MFET, that a client would have to know the name of the "program" MFET provided to complete the proposed form, and that the revised procedure did not address adequately a quick resolution for itinerant clients because it provided for an appeal to MFET's Board of Directors, which meets only twice a year.

46. MFET failed to establish that it provided for the involvement of low-income persons in the planning, implementation and evaluation of programs. Minn. Rule 3350.0120 requires an economic opportunity grantee to "devise specific opportunities for the involvement of low-income persons in proposing, planning, approving and evaluating the activities of its community action programs". A grantee must also provide for the regular participation of low-income persons in the implementation of its community action programs, pursuant to Minn. Stat. § 268.53, subd. (d).

47. MFET's application for the 1998-1999 grant was required to specify, as part of the evaluation and planning processes, how the input of low-income people will be considered and will influence its Work Plan and future planning. In response to these requirements, MFET submitted records of three focus groups held in 1995 and three focus groups held in 1996. The groups responded to a common set of questions involving general program operations, supportive services and employment and training. While the focus groups provided a one-time opportunity for individuals to comment on MFET's services, they do not, standing alone, accomplish the requirement of actual participation in the planning of programs or regular participation in the implementation of programs. Also, no record exists to establish that the results of the focus groups were considered or influenced in any way the preparation, evaluation, planning or approval of MFET's Work Plan and programs.

48. MFET submitted a survey analysis prepared by a St. Cloud State University professor, whereby 414 people responded to survey questions asked by MFET employees at MFET's offices about needs and services and general satisfaction with those services. Ex. A-16, at p. 14. The survey was conducted in 1995, prior to the beginning of 1996-1997 Grant Period, and there appears to have been no similar effort subsequent to that, although MFET claimed in the Planning Process Narrative portion of the grant application that it would conduct such a survey every two years. No record exists to show that the results of the survey were considered in or influenced in any way the preparation, evaluation, planning or approval of MFET's Work Plan and programs.

49. Although MFET has declared that some members of its Board of Directors are low-income individuals, the agency did not provide the Office of Economic Opportunity with any further evidence to establish that allegation.

50. Sections XVI (L) and XXII of the 1997-1998 Economic Opportunity Grant Agreement require a grantee to comply with the Americans with Disabilities Act of 1990 (ADA) and OEO policies requiring grantees to engage in certain activities to ensure compliance with the requirements of ADA. In November 1993, the OEO sent to all CSBG/MEOG grant recipients a memo notifying them that they would be required to conduct self-assessments, site accessibility surveys and resulting plans for modification.

51. In letters dated September 18 and November 12, 1996, the OEO requested from MFET a site survey for each of its offices, self-assessments of its programs, services, employment and communication and the resulting plans for modifications. MFET responded with an uncompleted form to be used to conduct building site surveys and an uncompleted form to be used for the self-assessment of program operations, and provided no plans for modifications. Ex. D-45 (pp. 71-93).

Employment Issues

52. Section XVI (C) of the 1996-1997 Economic Opportunity grant agreement requires MFET to comply with the minimum wage and maximum hours provisions of the federal Fair Labor Standards Act. This specific requirement is in addition to that of Section V of the Agreement, which requires MFET to comply with all applicable federal, state and local laws, rules and regulations and guidelines. MFET was in willful violation of these provisions because it intimidated employees into contributing to MFET's various programs through payroll deductions, auctions and raffle ticket sales. In addition, it failed to compensate employees for hours worked over 40 in a work week, and prohibited employees from using earned vacation time.

53. Minn. Stat. § 181.937 forbids an employer from engaging in any reprisal against employees for declining to participate in contributions or donations to charities or community organizations, including contributions to the employer itself. Under the statute, "reprisal" means any discipline or form of intimidation, harassment or threat, or any penalty regarding employee compensation or the terms and conditions of employment. OEO determined that MFET willfully violated that statute by repeatedly requiring employees, through intimidation, harassment or threat, to contribute involuntarily to MFET or a fund under MFET's control, by way of payroll deductions, raffles, auctions and other fund raising activities. The Department determined that employees made involuntary payroll deductions from their wages, purchased items

involuntarily at auctions that they were required to attend as part of employee training sessions, purchased raffle tickets involuntarily when they were unable to meet sales quotas and that the contributions were extracted through intimidation, coercion and harassment.

54. Carey Garcia-Heublein, who was employed by MFET as an Employment and Training Developer (ETD), was told by her supervisor that it was in her best interest to contribute and that there would be consequences if she did not. T. 414-418.

55. During her new employee training in March 1996, Irasema Morales, another ETD in the employ of MFET, asked the agency's Executive Director, Roberto Reyna, what would happen if she chose not to have contributions deducted from her wages. Mr. Reyna responded that Morales had no option but to contribute and either she helped out or she was not accepting the mission of the agency. T. 1072-1073.

56. In February 1996, Ngoc Van Pham, an accounting technician at MFET, decided to stop having contributions deducted from his wages because his wife had lost her job. He was approached subsequently at work by Efran Tovar Leon, the agency's Assistant Director, and told that he should contribute something because everyone had to donate. After Mr. Pham indicated on the form that he would donate $2.00 per pay period, Mr. Tovar Leon told him that employees were expected to contribute a minimum of $5.00. T. 646-651, Ex. D-31 (pp. 2-3). Mary Hart, an ETD Supervisor, definitely believes she was intimidated and pressured into signing a paper giving permission to take $10.00 every two weeks from her check. Ex. D-55m indicates that MFET expected employees who made more money needed to give more and were almost told how much and where to sign. Ms. Hart emphasized that she was not asked if she wanted to contribute, but was told to contribute.

57. In order to raise more money, MFET held auctions during mandatory staff training sessions. With the exception of a small number of guests, the only people present to bid on items at the auction were MFET employees. T. 827. At a staff training session in the fall of 1994, Mr. Reyna told MFET personnel that if they were unable to raise extra money through contributions and auctions, there would be no funds for raises, and left the impression that it was important in order for an employee to keep his/her job, in addition to wanting any future raises, to be donating to MFET. T. 830-831 (Testimony of Jeri Auger).

58. Luanne Tschann, a Field Operations Director for MFET, was pressured by Mr. Reyna to give more than the $2.00 per pay period that she was contributing, and Mr. Reyna implied strongly that she needed to talk to an employee she supervised who had not been contributing. Tschann was left with the definite impression that if anyone in her supervisory area was laid off, it would be people who had not made the "voluntary" contributions. T. 1232.

59. Lee Starken, MFET's Fiscal Officer, and Greg Aalbers, an accountant for MFET, personally purchased raffle tickets to meet a quota imposed by the agency in connection with a fund raising raffle in the fall of 1995. All employees were required to sell 100 raffle tickets for that event. Two days before the raffle, Mr. Tovar Leon met with Starken, Aalbers and two other MFET employees and told them they had not sold

enough raffle tickets and that they had until the day of the drawing to "do better". T. 494-495, 500-502, 859-861. Exs. D-55d, D-55y.

60. After Charles Kane, an inspector with the United States Department of Labor, advised Mr. Reyna in writing that MFET's fund raising activities were likely a violation of federal law, some employees requested MFET to reimburse them for their involuntary contributions. MFET refused to reimburse those employees who requested their money back and claimed that they had contributed voluntarily. Mr. Reyna threatened one MFET employee with legal action if she persisted in seeking reimbursement of the money that she felt had been contributed involuntarily. Ex. D-55a.

61. MFET conducted annual staff training sessions, which required the attendance of employees at a Twin Cities hotel on two days in July. The training sessions were scheduled between 8:00 a.m. and 9:30 p.m. Ex. D-55h. MFET employees were not paid for the hours they were required to attend work activities after 5:00 p.m. in connection with these sessions.

62. On February 23, 1996, MFET issued a memo to all employees that, effective that day, "all annual leave which has been approved is cancelled and requests for annual leave will not be approved until further notice". Under MFET's personnel policies, any annual leave accrued in excess of 30 days (240 hours) was lost.

63. As a result of MFET's annual leave prohibition, which continued for approximately three months, Lee Starken lost 33 hours of annual leave that he had accrued. The OEO determined that Starken was thus denied a benefit provided for under his employment agreement, and that MFET's actions in violation of employment laws regarding vacation entitlement was willful.

64. MFET did have a grievance procedure for issues such as payroll problems. During the five years prior to the November 20, 1997 denial of the grant application for 1998-1999, only two grievances were filed, and those were for unidentified issues and neither employee appeared to present the grievance to the Board.

65. The request for a refund of contributions made by Mr. Starken was made after he had received a written reprimand. Starken also encouraged other employees to write letters to the United States Department of Labor and complain about MFET's contribution plan. T. 556-571.

66. MFET ceased all employee contribution activities as of June 1996, more than a year prior to the termination of MFET's grant.

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Any of the above Findings more properly termed Conclusions are hereby adopted as such.

2. The Administrative Law Judge and the Commissioner of Education have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 14.55, Minn. Rule 3350,.0060, subp. 5, and pursuant to the Commissioner's Order on Motion to Remand and for Other Relief of August 9, 1999.

3. The Department gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of statute and rule.

4. The Department/Complainant has the burden of proof to show by a preponderance of the evidence that it was proper to terminate the CSBG/MEOG grant awarded to Midwest Farmworker Employment and Training (MFET).

5. The Department has demonstrated by a preponderance of the evidence that the OEO grant for MFET's future CSBG/MEOG funding was terminated for cause.

6. The Department has demonstrated by a preponderance of the evidence that MFET engaged in willful violation of the 1996-1997 Economic Opportunity Grant Agreement and that its application for the 1998-1999 Economic Opportunity Grant was incomplete and non-complying.

7. The Commissioner's Order in this matter issued on August 9, 1999 on MFET's Motion to Remand and for Other Relief establishes that Minn. Stat. § 14.61 (requiring the agency to make the final decision, not the Administrative Law Judge) and Minn. Rule 3350.0060, subp. 5, provide that this matter be determined through a contested case hearing before an Administrative Law Judge. The Administrative Law Judge's Findings of Fact, Conclusions and Recommendation in this matter is not the final decision in the case, absent a specific statute making it a final order. There is no such specific statute. The statement at page 105 of 109 of the Community Services Block Grant Plan that the Department is bound by the findings and determination (Ex. A-38) does not transform the ALJ's report from a recommendation to a binding order.

8. Based on the above Findings and Conclusions, it was appropriate for the Department's Office of Economic Opportunity to terminate MFET's CSBG/MEOG Grant for the 1998-1999 Grant Period.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Department's decision to terminate the Federal Community Services Block Grant and Minnesota Economic Opportunity Grant funding

for Midwest Farmworker Employment and Training, Inc., during the 1998-1999 Grant Period be AFFIRMED.

Dated this 19th day of November, 2003

/s/ Richard C. Luis
Richard C. Luis
Administrative Law Judge

Reported: Reporters Diversified Services.
Transcript Prepared from Tapes.

MEMORANDUM

MFET asserts that the Department is required to accept the Administrative Law Judge's "decision in this proceeding" as the final agency decision in this matter. In addition, it maintains that federal law prohibits the Department from terminating future funding before affording a hearing on the termination. Both of these issues were addressed explicitly in the Commissioner's Order on Motion to Remand and for Other Relief issued August 9, 1999 (hereinafter "Commissioner's Order").

Regarding the final decision, the Commissioner's Order cites Minn. Stat. § 14.61 as requiring the agency to make the final decision, not the Administrative Law Judge. Commissioner's Order, at 7. Since MFET relies upon language in the state plan for CSBG, MFET is asserting that the Department has contracted to conduct such hearings with the Administrative Law Judge making the final decision. The Commissioner's Order held differently, stating:

> The State is without power to contract away its decision-making responsibility assigned to it by the Legislature. Thus, any agreement in the CSBG Plan purporting to do so is void and of no effect. The decision is the Commissioner's or her designee's, and does not reside in the Office of Administrative Hearings.

The Commissioner's Order addressed also the issue of whether termination of future funding without a prior hearing constitutes a violation of 42 U.S.C. § 904(c)(11). The Commissioner's Designee concluded that the procedural posture of this matter

does not constitute a violation of any of MFET's constitutional or legal rights. That ruling stands as the "law of the case" in this proceeding. The Administrative Law Judge is bound to follow it.

Where interim proceedings have resulted in the resolution of issues, the doctrine of the law of the case comes into play. As the Minnesota Court of Appeals stated:

> This court in a previous order determined that the ALJ did have jurisdiction to hear and render a decision on the annexation and incorporation of the petitions involved here. In re: Knaak v. State, No. C7-99-1871 (Minn. App. November 24, 1999). That holding became the law of the case and is no longer subject to change by appellants. Mattson v. Underwriters at Lloyd's of London, 414 N.W.2d 717, 719-20 (Minn. 1987) (refusing appellate review because doctrine of the law of the case precludes relitigation of an issue previously decided on appeal in the same).

While the two issues raised by MFET were resolved by the Commissioner's Order, and the Commissioner's Order has become the law of the case and must be followed now, the issues remain subject to review under Minn. Stat. § 14.63, once there is a final decision in this matter.

This proceeding involves a challenge to a Notice of Termination. When a Community Action Agency such as MFET is aggrieved by such a notice, Minn. Rule 3350.0060, subp. 5 provides for a contested case hearing before an Administrative Law Judge. The ALJ's report is a recommendation only, unless there is a specific statute making it a final order, and no such statute applies in this case. Despite the fact that federal funds are involved and federal laws and regulations also are applicable to the CSGB Grant, the hearing remains a contested case hearing, with the ALJ making Findings of Fact, Conclusions and a Recommendation to the Commissioner, who makes the final decision.

The statement in the CSGB plan implying that the Department is bound by the Findings and Determination (Exhibit A-38, p. 105 of 109) does not transform the ALJ's report from a recommendation to a binding order. The CSGB plan is merely that, a plan or proposal, or a method to accomplish an objective. It is not a statute, rule or regulation and the mere inclusion in the plan of the statement relied upon by MFET does not render state law meaningless where the maker of the statement has no authority to amend or waive the law.

MFET argues that because the Complainant approved a grant application made by MFET for an ESGP Grant on November 13, 1997, and because the approval of the ESGP Grant involves the same standards as the CSBG/MEOG Grant approval process, it is inconsistent for the OEO to deny MFET's application for the CSBG/MEOG Grant for 1998-1999. The argument is immaterial. The issue in this report involves the CSBG/MEOG funding termination, and whether cause has been established by the Complainant for that decision.

As pointed out in the Department's remarks responding to a letter from the Administrative Law Judge asking for clarification and additional argument, the

requirements and characteristics of the ESGP Grant differ from those of the CSBG/MEOG Grant. There is a distinction also in the processes and standards for evaluating and approving the two types of grants.

The ALJ is persuaded that Connie Greer, Director of the Office of Economic Opportunity explained adequately why the ESGP Grant was approved and the grant under examination in this case was denied. Ms. Greer noted that multiple and significant events requiring action were occurring during a short period of time when the decisions on the two types of grants were made. T. 1006-1007. At the time, the OEO office was in the process of moving, physically and administratively, from the Department of Economic Security to the Department of Children, Families and Learning. In addition, the office was preparing for an upcoming legislative session. Ms. Greer approved the ESGP Grant November 13, 1997, before the process was completed and final decisions made regarding the CSBG/MEOG proposal.

As noted by counsel, the final decisions regarding the larger grant (CSBG/MEOG) would normally have been made before the time to sign the ESGP Grant. However, because of the significant issues regarding MFET's 1998-1999 application, the final decisions and letter were not issued until a week after those on the ESGP proposal. The combination of concerns regarding the larger grant was much greater and comprehensive than the concerns about MFET's application for ESGP funds, and included issues that did not apply to the ESGP decision.

To approve one grant and deny the other was not inconsistent. As Ms. Greer testified: "We had an awful lot on our plate at that point in time. I was very worried and hesitant about signing it (ESPG Grant) but I just felt that at that point in time, that we should move forward with that activity and let it play out and just take care of one thing at a time and we would deal with that - - that activity after we had dealt with the CSBG activity." T. 1006-1007. The Administrative Law Judge agrees with the Department's response to MFET's argument that if the OEO had grounds to deny both grants but only denied one it should not be permitted to deny either – that such an argument is misplaced and illogical.

Minn. Rule 3350.0060, subp. 1 requires the OEO to terminate a community action agency's funding if cause exists, including:

A. Actions threatening imminent danger to health or safety of members of the community;

B. Unresponsiveness to service needs of low-income people or hindrance of participation by low-income people as provided in subpart 4;

C. Willful violation of contract by the CAA;

D. Failure to remedy a short-term defect after withholding as provided in part 3350.0100, subp. 2;

E. Failure to remedy a long-term defect after funding termination as provided in part 3350.0100, subp. 2; or

F. Denial of an application as provided in part 3350.0170, subp. 6.

The OEO terminated MFET's funding based upon clauses C, Willful violation of contract by the CAA and F, Denial of an application as provided in part 3350.0170, subp. 6.

The Administrative Law Judge believes the Department has proven by a preponderance of the evidence that the employment/personnel policies detailed in the Findings, taken together with a failure on MFET's part to establish and maintain cooperative working relationships with providers of direct services to migrant and seasonal farmworkers and MFET's failure to establish and maintain cooperative working relationships with coordinating and advocacy groups, its failure to provide direct services and to provide effective applicant/client complaint procedures, MFET's failure to involve low-income persons in planning, implementation and evaluation of its programs constitute, in the aggregate, willful violation of contract by MFET within the meaning of Minn. Rule 3350.0060, subp. 1.C. MFET also violated federal and state wage and hour laws in a fashion that constitutes a willful violation of its Grant Agreement (the contract in question).

Subpart 6 of Minn. Rule 3350.0170 provides that an application will be denied if any of the following occur:

A. Application is submitted after the deadlines in subpart 5;

B. Applicant submits an incomplete application;

C. Applicant submits a non-complying application where:

(1) Applicant's annual work plan activities are:

(a) inconsistent with community action program activity as defined in the

Act and part 3350.0110;

(b) not demonstrative of participation by low-income persons as required by part 3350.0120; or

(c) inconsistent with the local planning process in part 3350.0130;

(2) Applicant cannot demonstrate adequate fiscal management capabilities
as required in part 3350.0160; or

(3) Applicant's budget does not support, or is inconsistent with, the work plan activities; or

D. The department's denial of an application based on items A, B, and C is cause for termination of available funds for an entire program year. . . .

The Administrative Law Judge concludes that the Department has established by a preponderance of the evidence that it was proper also to deny MFET's application as provided in part 3350.0170, subp. 6 because the application was incomplete and non-complying.

MFET finds it significant that in 1996 and 1997, it responded to several requests from the Department for information, including the preparation and submission of

considerably lengthy responses on certain occasions. It notes that its responses included information about its complaint procedures, eligibility guidelines, Work Plan, its corporate standing and Board minutes, its planning and evaluation process (including the involvement of migrant and seasonal farmworkers and other low-income people), its monitoring plan for compliance with the Americans with Disabilities Act and its linkages with other service providers.

MFET points out that on several occasions, it found the Complainant's requests to be lacking pertinent information, confusing and/or contradictory. A particular problem, from MFET's point of view, was that the individuals who filed complaints in the matters cited by the Department were not identified, making it impossible for MFET to rectify the individual situations such as by taking appropriate remedial action.

MFET also notes that in any given year, it served approximately 12,000 individuals in more than 3,000 households, and that the number of complaints, taken in that context, were minimal.

On December 3, 1996, MFET submitted a 212-page response to Complainant's November 12, 1996 request for information (Exs. D-44, D-45). In the cover letter to its response, MFET stated that it had truly tried to respond to all the Complainant's requests, "even those that any reasonable person would consider confusing and contradictory." As an example, MFET pointed out the Department's May 29, 1996 request to change its eligibility requirements, and that after several phone calls in an attempt to clarify what the requirements should be, the Department's response on August 28, 1996 was equivocal. MFET's letter notes that it is difficult for it to "keep guessing" as to what words the Department would approve. The letter suggests further that such continuous guessing accounted for MFET's lengthy response time to the Department's directives. On another issue, MFET complained that it was getting conflicting signals from various Department staff persons as to whether or not the Department approved of its Work Plan.

MFET argues further that even if there was some failure on its part to understand correctly the Complainant's application requirements, if there were deficiencies in areas such as its Work Plan, or if MFET had somehow failed to address certain topics in the application, such errors are reasonably subject to correction. From there, it argues that the Department's grant denial for 1998-1999 was arbitrary.

MFET notes also that the Department's final denial letter of November 20, 1997 highlights a number of areas which were not raised in the "warning" letter sent on September 10, 1997. MFET notes further that it responded completely and thoroughly to everything raised in the September 10, 1997 letter (Ex. D-4) in its response on October 8, 1997 (Ex. D-12). Since new concerns were raised in the November 20, 1997 denial letter (Ex. D-13) and MFET was given no opportunity after that to correct the deficiencies raised in November, it argues that the denial was arbitrary on that basis as well.

The Administrative Law Judge is unable to accept this argument. A "second chance" for an applicant in the position of MFET arises under Minn. Rule 3350.0160, subp. 6, which provides that an application cannot be denied for incompleteness or noncompliance unless the Department provides written notification of the deficiency

leading to a possible denial and requests a revision of the application, supplementary information or other required documents. That is precisely what was done in this proceeding.

The matters "raised for the first time" in the termination document of November 20, 1997 are separate, discrete causes under Minn. Rule 3350.0060 for termination of funding for cause. Specifically, they involve the Department's determination under subp. 1.C. of Part 3350.0060 that MFET had violated its contract willfully. Subpart of 2 of Part 3350.0060 provides that the "governing body" (the Department) is required only to serve its notice of termination on the Community Action Agency (MFET) and explain specifically the cause for termination. The notice must also contain a copy of the agency's appeal rights. In this case, the recourse is to appeal for a contested case hearing, precisely what was done in this matter.

In response to MFET's argument that it essentially never had a chance to "correct itself," and that the ultimate denial was arbitrary and capricious, MFET cites as an example that although it quit soliciting employee contributions in June, 1996, it was never warned that the activity was a basis for a possible grant denial until the denial occurred on November 20, 1997. The Department notes that MFET, as a long-term grantee, had an obligation to be familiar with and adhere to certain federal and state laws, rules and regulations, especially since they were the same ones with which MFET certified it would comply. It argues there was no need to give MFET explicit notice that violation of the terms of the Grant Agreement could jeopardize future funding since MFET was aware of the government-mandated oversight by the Department to ensure that public funds were spent for the purposes for which they were granted.

As for general deficiencies, the Department notes MFET had numerous opportunities to make corrections to its practices before the denial of the grant. Exs. D-41, D-42, D-43 and D-44 show a continuing stream of identification of deficiencies and requests for correction directed to MFET at least a year before it applied for grant renewal. The ALJ agrees -- MFET had numerous notices of deficiencies and opportunities to correct them well before the denial of the grant application on November 20, 1997. In particular, Ex. D-44, a letter sent to Mr. Reyna and MFET's Chair Raul Cardonas on November 12, 1996 notes that the Grant Agreement requires the Grantee to submit timely reports as required by the Department and to comply with all procedures and policies issued by the Department relating to performance of grant requirements. MFET was notified that it had to provide appropriate narratives of its planning and evaluation processes (a requirement of law), and of other procedural failures.

MFET argues that the record shows its Board of Directors includes a number of migrant and seasonal farmworkers and other persons of low income, and that it has involved other low-income people in its planning and evaluation processes. It notes that there is no express quantitative requirement prescribed by any applicable rules, and absent that, the conclusion that MFET's efforts fail to involve low-income people in its planning/evaluation processes is not reasonable. The ALJ disagrees. The OEO's judgment that MFET did not show enough to establish the Directors' financial status or to show how low-income people actually participated is supported by the record. Absence of a quantitative standard is immaterial.

MFET maintains that it established, through testimony and documentary evidence, many cross-collaborative relationships and memberships with other organizations, including an extensive network of its employees and former employees who work with or serve on the boards of other, related agencies. However, the Department's judgment that what MFET provided in this regard was insufficient is supported by the record. Its judgment that MFET did not show enough is not arbitrary – it is backed by evidence to that effect.

As to alleged deficiencies in its complaint procedures, MFET points out that there is no rule defining or prescribing any specific complaint procedure for a grantee to follow. The Respondent points out also that its complaint procedures were in existence for many years before 1996 and had never been questioned, and that there were no issues raised in Complainant's September 10, 1997 letter with respect to MFET's complaint procedures. MFET argues further that the Complainant has no authority to impose a requirement that the grantee provide for oral complaints.

In connection with complaint procedures, MFET complains that the Department was not interested in having service complaints resolved (since it provided MFET with no identity of the specific complainants) but only to impose an arbitrary undefined process requiring MFET to guess as to what procedures might be satisfactory to the OEO.

The ALJ does not agree. Noting that MFET did not provide a system to handle oral complaints is not going outside the OEO's authority – it merely notes a problem exists that MFET has not resolved. The absence of rules prescribing specific procedures is immaterial. The OEO's judgment that MFET's complaint procedures were inadequate is supported by the record and is not arbitrary.

Regarding an additional ground for termination of its grant, MFET argues that Complainant's accusation that the Grantee failed to comply with the Americans with Disabilities Act is unfounded. It notes that the issue was not mentioned in the Complainant's September 10, 1997 letter to MFET, and argues further that the Department has offered no evidence to prove MFET has failed to conduct building access surveys. With respect to MFET's submitting copies of the blank forms it uses to conduct such surveys in response to the Complainant's letter of November 12, 1996, MFET notes that the Complainant never told MFET that completed survey copies would be required.

Again, the Judge cannot agree. It is apparent that the Department wanted completed surveys, and MFET's failure to provide them implies they were not performed.

Also not mentioned in the September 10, 1997 letter, but alleged in the Department's November 20, 1997 denial letter are violations of state and federal Wage and Hour Laws. In response, MFET notes first that it responded to a letter requesting related information on January 27, 1997 by submitting a 655-page response, supplying all the information that was sought (Exs. D-47, D-48).

MFET argues that the testimony of the various witnesses attempting to establish the allegation that MFET coerced employees to contribute to MFET by way of payroll

deductions, raffles, auctions and other fund raising activities has failed to prove that charge. As evidence, MFET notes 100 pages within Ex. D-47, which are signed authorizations by individual employees who made the contributions, and argues that no employee ever suffered an adverse consequence of any kind for failure to make a contribution. The Respondent notes that some employees were even given promotions and raises even though they did not contribute to MFET, and that some apparently were never asked or offered the opportunity to contribute.

Unfortunately for the Respondent, a number of witnesses testified that they signed the authorizations only because they felt they had to, due to intimidation by Executive Director Reyna and Assistant Director Tovar Leon.

MFET characterizes the incidents which the Department alleges were threats or intimidations as simple "attempts to motivate generosity", which is not intimidation. MFET notes that many employers, including state and federal agencies, encourage employees to contribute to United Way and other organizations. The ALJ does not agree – it is apparent the "attempts to motivate" were interpreted by many to be coercive.

As to allegations, new on November 20, 1997, that MFET violated state and federal labor standards in three ways relating to overtime, the Respondent argues that there is no credible evidence of misinformation about eligibility for overtime pay or that MFET directed employees not to claim overtime. It notes that the Complainant's accusations with respect to these alleged fair labor violations appear to be based on a contention that MFET required personnel to attend evening recreation activities and auctions during annual training sessions. In response, MFET notes that the Complainant produced no credible evidence that any employee "worked" more than 40 hours in any week in which such training sessions occurred. It also discounts the credibility of any evidence that employees were compelled to attend the auctions, suggesting that the evidence establishes that employees stayed for the evening activities because MFET supplied food or snacks and that the activity was perceived as fun. On those specifics, the Judge is persuaded that the Department's evidence to the contrary outweighs MFET's contentions.

As to the allegation of not cooperating with other agencies or entities that serve the same population MFET does, and for not "collaborating" with such entities, MFET argues that it had a right to choose among various organizations and allocate its available time to some while excluding or limiting involvement with others.

MFET points out that the word "collaboration" does not appear in federal statutes or regulations, state statutes or rules with reference to a requirement for Community Action Agencies or migrant and seasonal farmworker organizations. It seems the word may mean two different things – one to Department personnel and another to representatives and officials of MFET. On the other hand, the ALJ is persuaded that the OEO's conclusion that MFET failed to show true collaboration with certain key agencies has support in the record. It was not arbitrary to conclude that MFET was not collaborating in an appropriate fashion.

MFET notes that much of the state's evidence of alleged lack of collaborative activity is based on the testimony of relatively low level employees having limited

knowledge of their employer's programs or limited contact with MFET and other organizations. On the other hand, MFET points out that the evidence contains numerous testimonials to its cooperative and collaborative relationships with many other service providers throughout the State of Minnesota, including officials of the Department and Migrant Legal Services. MFET urges that this evidence, which contains details describing collaborative activities, should render inconsequential the "vague and conclusory" testimony of witnesses who were not aware of collaborative efforts generally. MFET urges an acceptance of "collaboration" to mean a cross-referral of clients between social service providers. The Complainant's definition appears at Finding 27.MFET notes further that at one point in 1997, the Department specifically identified it as a collaborative organization. (Ex. A-36, pp. 3, 6).

The ALJ notes that the Department has made a strong case to the contrary, and established by the greater weight of the evidence that what MFET failed to do is what supports a conclusion that its collaborative efforts were insufficient. MFET's argument that the Department's judgment gave too much weight to the opinions of "low level" employees is not supported on the record.

MFET argues that there is no evidence that it ever misused or misapplied any grant funds, and that all the Department has shown is that there were complaints attributed to persons unknown who may or may not have been eligible for MFET services alleging that they had applied for some type of service from MFET and were denied. MFET notes that resources were scarce and that there was a great demand for services, so it attempted to ensure that it would be able to serve the migrant population throughout the growing season by utilizing other private and public resources to assist the affected population where appropriate.

MFET admits that it referred eligible individuals to other service providers, such as food shelves and county welfare agencies, but only in non-emergency situations, and only to make its delivery of services more effective. The Department acknowledges that the use of client referrals to other providers can be an effective tool and can accomplish the provision of a needed service which the grantee may not provide. The Department argues, however, that a one-way referral does not indicate a cooperative working relationship.

The Department notes that MFET sent clients to Migrant Legal Services (MLS) unilaterally without contacting that agency. Such a "referral" will not be successful unless agencies such as MFET and MLS have discussed these referrals in advance to determine whether or not the agency receiving the client referral can provide an appropriate service to the client. The Department argues, and the ALJ agrees, that a mere referral to another agency without communication cannot stand to establish a "cooperative working relationship."

MFET denies that it required anyone to be employed or to enroll in its JTPA programs in order to be eligible for its services. MFET notes that the Department's attempt to base such a claim relies on what MFET believes are unfounded and unsubstantiated allegations. It notes that the Department relied on only four complaints over a period of four years. T., 744. It argues also that if such "eligibility" determinations were required, that MFET was motivated by a fear that MFET would run

out of funding. MFET argues further that it did not require people to be employed, but simply that the people had to establish that they were actively seeking work before MFET would assist them.

MFET denies also the Department's charge that it required applicants to establish a denial of assistance from other programs, noting that none of the complaints in this regard were ever substantiated specifically. The Respondent notes that it is required to focus its resources on the most needy members of the population it serves, and that the Department did not provide them with information necessary or reasonably calculated to achieve an improvement in services.

The ALJ concludes that the Department's evidence – testimony by applicants and former employees – that MFET directed applicants to establish that other agencies had denied them or that they be employed or enrolled in an MFET program first, has ample support in the record. OEO's reliance on that evidence was not arbitrary.

The Department notes that it sends out requirements for cooperative and collaborative relationships in Application Guidelines for CSBG/MEOG Grants every year, and has done so since at least 1981. During those years, the Department has accepted as factual the statements MFET made in its numerous applications for such funds that it had developed those types of local relationships with other service providers.

The record reflects numerous occasions where problems arose after the Department requested an expansion of cooperative efforts. For example, the Department requested MFET to consider extending cooperative services for the homeless to additional counties, but MFET declined. T. 1036, Ex. D-41. In addition, the Department sent a letter to MFET encouraging and requesting that it participate with the Urban Coalition to study hunger among migrant and seasonal farmworkers. Ex. D-54. MFET did not participate.

The Department asked MFET to participate with the OEO and other agencies to produce a packet of information about services to send to areas of Texas before the migrant season started, but MFET did not participate in preparation of the packet and did not provide information for it. The Department requested MFET's participation in two conferences held in 1993 and 1994 for community action grantees regarding collaboration, at which the definition of collaboration was the focus of the training. T.259, Ex. D-49. These examples support the Department's argument that MFET has not collaborated properly within the meaning of the Department's definition of the term, and refutes MFET's argument that the Department gave it no direction in that regard.

MFET has argued that it was required under Minn. Rule 3350.0110, subp. 1C to refer potential clients to other agencies for service eligibility decisions. The Department notes that the rule does not "require" MFET to refer such people to other service providers for the purposes of determining eligibility for MFET's programs and services, nor does it require them to delegate to another agency the authority to determine a client's eligibility for an MFET program.

The Department notes that MFET had a number of options for implementing the rule in question to utilize resources from other programs operating in areas served by

the Respondent. It could have had an agreement with another service provider to utilize one or the other's resources first, then to use the resources of MFET or the other agency party to the agreement. MFET could have entered agreements to share the costs of a service, event or publication. It could have arranged to share staff, resources and expertise, or to create a funding pool, or to share clients, space and costs. Among the options offered was to co-locate with another agency, but MFET did not do that nor did it take the initiative or respond favorably to any of the approaches noted. In fact, the record shows that MFET instructed some staff not to refer clients to certain agencies and/or not to call some agencies to which clients were referred (Ex. D-51b).

MFET denies the claim that it violated federal minimum wage and overtime laws, noting that it is undisputed that even beginning employees were paid $9.00 an hour or more (T. 406, Ex. D-47, p. 90 of 655). The Respondent points out that the Department did not identify with specificity which laws regarding overtime it contends was violated. MFET argues that the testimony and other evidence supplied by employees who allege that they worked overtime when they attended auction activities conducted in the evenings during staff training seminars is "disputed and questionable". The Judge cannot agree. The testimony by witnesses who felt imposed upon to work extra hours was compelling and persuasive.

MFET argues also that the Department's testimony regarding alleged extraction of contributions through payroll deductions was extremely equivocal, noting specifically that some employees testified to a vague feeling that they felt required to make such contributions. On the other hand, other witnesses acknowledged that they received promotions and pay raises without making any contributions. The ALJ is not persuaded. As noted above, the testimonies to the contrary are not vague – the witnesses definitely felt Reyna and Tovar Leon had intimidated them.

The Complainant has established that MFET's application for the 1998-1999 Economic Opportunity Grant was incomplete and non-complying in several areas, as noted above. The non-compliance included MFET's work plan to provide direct services, its coordinated plan and descriptions of local collaboration, its failure to demonstrate the involvement of low income people in proposing, approving and evaluating MFET's activities, MFET's failure to identify measurable client outcomes and MFET's failure to comply with administrative requirements.

Regarding MFET's dispute over the evidence of complaints received by the OEO involving the Respondent's policies and procedures for providing direct services and its failure to provide direct services to migrant and seasonal farmworkers, the Administrative Law Judge believes it was not necessary to know the identity of persons who filed complaints because the allegations concern policies and procedures for providing direct services to any applicant and denial of services to applicants based on lack of funds. The referral to the OEO of the several complaints about MFET's policies and procedures for providing direct services to migrant and seasonal farmworkers were corroborated by MFET's own employees and by employees of other service providers, as noted above.

With respect to the violations of employment laws, MFET admits that some nonexempt employees worked in excess of 40 hours per week and were not paid for

those additional hours. Those employees should have been paid time-and-a-half for the hours they worked in excess of 40. MFET also failed to cure the improper payroll deductions, which were violative of Minn. Stat. § 181.937, by simply stopping its practice of requiring employees to make contributions to MFET. To cure the violation, MFET should have repaid the employees the contributions they made.

MFET argues that what has really happened in this matter is that the Department became the willing tool of disgruntled former employees who had failed to assert their purported claims in a proper forum that would protect the due process rights of MFET. The Respondent urges particularly that the testimony of Lee Starken be discounted, alleging that he is a "ringleader" of the disgruntled individuals.

MFET asserts that the State acted unlawfully, violating the principles of fundamental due process, in denying MFET future grant funding on the basis of employee allegations, in addition to acting unlawfully when it cut off all funding without a hearing on the record. (This latter allegation has been rejected already by the Commissioner's Designee).

MFET maintains further that the Office of Economic Opportunity was motivated to terminate MFET's grant because OEO lost the competition for administration of JTPA funds (over $2 million in 1996-1997) to MFET in the application competition during the grant cycle preceding the review of MFET's request for CSBG/MEOG funds for 1998-1999. As a result, MFET urges, OEO was looking for any flaws in MFET's application, or sought to magnify personnel and procedural issues that arose in 1996-1997 so that it could deny MFET its next grant, a decision on which OEO was in control. The record does not establish, except by implication, that the Department was so motivated when it reviewed MFET's application and investigated its operations.

The investigation into the operations came about primarily because of complaints from the population MFET served and from MFET employees such as Mr. Starken. No substantial evidence exists to show that the application reviews performed by Aden, Niskinen or Greer were biased.

In that connection, MFET argues that many of the bases for the denial of grant renewal rely on a case that was "manufactured" by Lee Starken, who was a disgruntled employee. The Respondent describes Mr. Starken's style as "combative and evasive." It characterizes Mr. Starken as a difficult employee who refused to adapt to changes in accounting practices and procedures, refused to implement recommendations from MFET's auditors and generally resisted directives.

The Department notes that Mr. Starken's testimony is corroborated by that of several coworkers, including Ngoc Van Pham, Greg Aalbers, Luanne Tschann, and Jeri Auger. Mr. Starken characterizes himself as a whistleblower, rather than a disgruntled employee, and the Administrative Law Judge concludes, based on the entire relevant portions of the record, that his testimony and the testimony regarding employment difficulties at MFET provided by others who agreed with him or supported his claims are credible.

The Respondent encourages the Administrative Law Judge to find that, in denying MFET's Grant Application for 1998-1999 the Department exercised its will, rather than its judgment. The ALJ is not persuaded that such is the case.

MFET's argument confuses the Department's exercise of broad, discretionary judgment with an arbitrary exercise of will. Minn. Rules 3350.0060, subp. 1 and 3350.0170, subp. 6 provide the grounds for terminating MFET's grant. The Administrative Law Judge believes that the OEO established by a preponderance of the evidence that MFET's application was incomplete and non-complying within the meaning of Minn. Rule 3350.0170, subp. 6 (B) and 6 (C). The deficiencies proven in those areas require OEO to terminate MFET's grant for cause within the meaning of Minn. Rule 3350.0060, subp. 1. The Department also established by a preponderance of the evidence a separate cause for grant termination - willful violations of contract by MFET (Minn. Rule 3350.0060, subp. 1 C).[1] Either of the above noted deficiencies constitute cause for terminating MFET's funding. In the aggregate, they establish that the OEO has proven its case.

The Department enjoys a great deal of discretion in deciding who is to receive these grants. The Department followed required procedures by notifying MFET, prior to non-renewal, of the reasons for its pending denial on the basis of incompleteness or non-compliance in the application process and gave MFET an opportunity to correct those deficiencies and persuade OEO that any contemplated termination would be incorrect.

The ALJ is persuaded that the breadth of the discretion vested in OEO restricts the scope of review by an Administrative Law Judge on the merits. See Community Action Organization of Erie County; Inc. v. Action, 546 F. Supp. 494, 497 (D.C.N.Y., 1982). In the case of Frasier v. U.S. Department of Health and Human Services, 779 F. Supp. 213 (N.D.N.Y., 1991), a federal judge commented, at 779 F. Supp. 221, on another set of regulations, these involving the National Endowment for the Arts, where the agency deciding on the grant had broad discretion to exercise its judgment about whether a grant should be awarded, renewed or terminated. The court found that in matters where "the purposes are stated in terms so amorphous and subjective that this court is obliged to refrain from reviewing agency decisions rendered hereunder. . . The Administration still has considerable license to award or deny funding requests." The regulations violated by MFET are somewhat subjective, and their language simply provides for broad agency discretion deciding on the termination of a grant. It has not been established here that the discretion was abused.

The Administrative Law Judge is not persuaded by MFET's argument in this matter that the Department acted improperly by presenting it with charges in its November 20, 1997 letter which it had no opportunity to "correct". The matters raised for the first time on November 20, 1997 are different qualitatively from the matters involving "incompleteness" or "non-compliance" in the application. Matters involving incompleteness and non-compliance were raised in the Department's letter to MFET on September 10, 1997, and MFET was granted and took the opportunity to correct them.

The issues related to client complaint procedures, the lack of involvement of low-income persons in the planning, implementation and evaluation of its programs, MFET's

compliance with the Americans with Disabilities Act, failure to comply with minimum wage and maximum hours provisions of federal and state labor laws, and other personnel/employment issues are "violations of contract" which do not require a "second chance opportunity" to correct. MFET's recourse on those deficiencies was to file an appeal and go through a hearing process, and that was what was done.

What MFET contends is denial of its grant application based on vendetta, the Department has shown by a preponderance of the evidence to be a product of thorough, conscientious and impartial review. It is appropriate that the denial of a grant to MFET for 1998-1999 be affirmed.

R.C.L.

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[1] In this proceeding, the Administrative Law Judge has found willfulness on the part of MFET where he believes it was appropriate – at the points where MFET knew or should have known that its intentional, deliberate actions violated the Grant Agreement, a contract that required it to act lawfully and to obey the OEO's reasonable directives. See Black's Law Dictionary, 6th Ed. (1990) at 1599-1600.